

REMARKS

This Amendment is responsive to the Office Action mailed on December 1, 2004.

Claims 1, 3, 17, 24, and 26 are amended. Claims 1-28 are pending.

Claims 1, 3-4, 11, 13, 17-18, 24, 26-27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bacon (US 5,440,632).

Claims 2, 5, 6, 14, 19, 20, and 25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bacon in view of Bahraini (US 2002/0116706).

Claims 7-9, 21-23, and 28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bacon in view of Dufresne (US 5,630,920).

Claims 10 and 12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bacon in view of MacInnis (US 6,487,723).

Claims 15 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Bacon in view of Bahraini (US 2002/0108120).

Applicants respectfully traverse these rejections in view of the amended claims and the following comments.

Discussion of Amended Claims

Independent claims 1, 17, and 24 are amended to specify that the control information comprises at least authorization information. Claims 1, 17, and 24 are further amended to clarify that the control channel provides an open link between the transmitter/service provider and the terminal for enabling the provision of said control information to the terminal.

Claims 3 and 26 are amended to conform to the amendments made to claims 1 and 24, respectively, by deleting subject matter now included in claims 1 and 24.

Discussion of Bacon

Claims 1, 3-4, 11, 13, 17-18, 24, 26-27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Bacon. This rejection is respectfully traversed. An anticipation rejection requires

that each and every element of the claimed invention as set forth in the claim be provided in the cited reference. See *Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 68 USPQ2d 1186 (CA FC 2003), and cases cited therein. As discussed in detail below, Bacon does not meet the requirements for an anticipation rejection.

Claims 1, 17, and 24 now specify that the control information comprises at least authorization information. This subject matter was part of the subject matter of original claims 3 and 26. Original claims 3 and 26 specified that the control information includes at least one of configuration information, authorization information, updated code objects, and operational information. The Examiner indicates that Bacon meets the limitations of claims 3 and 26 as Bacon discloses the provision of updated code objects (Office Action, page 5).

However, Bacon does not disclose or remotely suggest control information which comprises at least authorization information provided over a control channel. Bacon is concerned only with downloading of new program code to a subscriber terminal. In Bacon, a terminal can be provided with new program through a series of transactions including a download parameters transaction and a download program code transaction. The download parameters transaction is 22 bytes in length and has four versions as shown at Figures 3A-3D. A first version (FIG. 3A) is for external memory configurations and a second version (Figure 3B) is for internal memory configurations. Either of these transactions may be addressed (Figures 3A, 3B) or global (Figures 3C, 3D) to provide versions three and four. In the addressed version of the download parameters transaction shown in Figure 3A, bytes 16 and 17 indicate the frequency of the channel on which the downloadable program code transactions will be transmitted (Col. 9, lines 25-68).

By having the download parameters transaction either addressed or global, internal or external, the system of Bacon allows for an efficient addressing of the program code to either all terminals, a group of terminals or even a single terminal. By indicating which code revision is acceptable to the terminal and indicating the code revision in the download transaction, the addressed terminals may even be further downloaded with different revisions or the same revision for a different microprocessor. Also the inclusion of the kernel revision provides for the update of the control microprocessor 128 or a new

model to allow compatible code conversion. Moreover, the distinction between internal and external memory can be used to direct program code as necessary (Col. 10, lines 51-68).

In contrast with Bacon, the present invention is directed at the control of terminals via a control channel, which control channel can be moved via a control channel configuration message that designates a particular channel to be used by the terminal. The control of the terminals includes control of the authorization state of the terminal. As set forth in amended claim 1, the control information sent over the control channel includes at least authorization information for the terminals. The downloaded code objects of Bacon contain updated program code for the terminals, and do not include authorization information as claimed by Applicants.

The download parameters transaction of Bacon only directs the terminal to a channel where a download of new code objects can be obtained. This download parameters transaction of Bacon does not designate a particular channel as a control channel as claimed by Applicants. Claim 1 is clarified to indicate that the designated control channel provides an open link between the transmitter and the terminal for enabling the provision of the control information until the terminal is directed to another control channel by a new control channel configuration message. In other words, Applicants' claimed control channel provides an open communication channel between the transmitter (e.g., at the service provider or headend of a cable plant) and the terminal so that the service provider/headend can maintain or change the authorization state of the terminal by sending authorization information over the control channel. This open link is maintained until the terminal is directed to another control channel by a new control channel configuration message. In contrast, in Bacon, once the download of new code objects is complete, the download link is no longer maintained. The process described in Bacon is analogous to updating Windows software on a personal computer by being provided with a URL to obtain the download. The URL tells the personal computer where to go to obtain updated software for Windows (i.e., the channel on which the code objects

can be downloaded). Clicking on the URL will cause the personal computer to connect to the software provider via the identified channel for downloading of updated software objects. Once the download is complete, the URL link is severed.

Accordingly, Bacon does not disclose a mechanism for designating a control channel used to provide control information comprising at least authorization information to a terminal, where the control channel provides an open link between the transmitter and the terminal for enabling the provision of the control information until the terminal is directed to another control channel by a new control channel configuration message, as claimed by Applicants.

By designating particular control channels for particular terminals, a terminal population can be grouped onto different control channels for more efficient control (see, e.g., Applicants' claims 7-12, 21, and 22). For example, control information intended for one group of terminals can be sent to them via one control channel, and control information for another group of terminals can be sent to over a second control channel. A terminal may be moved from one group to the other by changing the control channel it uses to obtain the control information via the use of a control channel configuration message sent to that terminal. Such functionality is not provided by the system disclosed in Bacon.

As Bacon does not disclose each and every element of the invention as claimed, the rejections under 35 U.S.C. § 102(b) are believed to be improper, and withdrawal of the rejections is respectfully requested. See, *Akamai Technologies Inc., supra*.

Discussion of Published Applications to Bahraini

Applicants respectfully submit that published U.S. application no. 2002/0116706 to Bahraini, published U.S. application no. 2002/0108120 to Bahraini (the Bahraini applications), and the present application are commonly owned. The assignment records available at the U.S. Patent and Trademark Office web site indicate that the Bahraini applications were originally assigned to Motorola, Inc. The Bahraini applications were subsequently assigned from Motorola

to General Instrument Corporation. General Instrument Corporation is wholly owned (100%) by Motorola, Inc. General Instrument Corporation is the assignee of the present application.

Further, at the time the invention described in the present application was made, the present application and the Bahraini applications were owned by, or subject to an assignment to, the same entity. Further, the Bahraini applications are potentially relevant only under 35 U.S.C. § 102(e). Therefore, 35 U.S.C. § 103(c) prohibits the Bahraini applications from being used as references against the present application. Therefore, Applicants respectfully request that the Bahraini applications be removed as references against the present application (see, MPEP § 706.02(1)(2), et seq.).

Applicants respectfully submit that the present invention is not anticipated by and would not have been obvious to one skilled in the art in view of Bacon, taken alone or in combination with any of the other prior art of record.

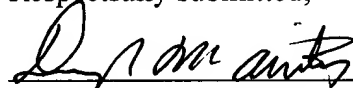
Further remarks regarding the asserted relationship between Applicants' claims and the prior art are not deemed necessary, in view of the amended claims and the foregoing discussion. Applicants' silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection.

Withdrawal of the rejections under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a) is therefore respectfully requested.

Conclusion

The Examiner is respectfully requested to reconsider this application, allow each of the pending claims and to pass this application on to an early issue. If there are any remaining issues that need to be addressed in order to place this application into condition for allowance, the Examiner is requested to telephone Applicants' undersigned attorney.

Respectfully submitted,



Douglas M. McAllister
Attorney for Applicant(s)
Registration No.: 37,886
Lipsitz & McAllister, LLC
755 Main Street
Monroe, CT 06468
(203) 459-0200

ATTORNEY DOCKET NO.: GIC-629

Date: February 8, 2005